FEDERAL HOUSING FINANCE AGENCY
2013 CHIEF FOIA OFFICER REPORT
MARCH 11, 2013

Preface

The Federal Housing Finance Agency (FHFA) was created on July 30, 2008, when the President signed into law the Housing and Economic Recovery Act of 2008 (Act). The Act empowered FHFA with all the authorities necessary to oversee and regulate vital components of the nation's secondary mortgage market – Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.

FHFA's mission is to ensure that the housing GSE's operate in a safe and sound manner so that they serve as a reliable source of liquidity and funding for housing finance and community investment.

Through its Freedom of Information Act (FOIA) Program, FHFA strives to achieve the principles set forth by the President and Attorney General. Specifically, the President directed agencies to:

- Administer the FOIA with a clear presumption in favor of disclosure, remove doubts in favor of openness, and not withhold information based on speculative or abstract fears; and
- Ensure that requests are responded to in "a spirit of cooperation", that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made.

The Attorney General provided additional guidance to agencies by:

- Underscoring and elaborating on the presumption of openness;
- Encouraging agencies to make discretionary disclosures; to not withhold information simply because they may do so legally; and to consider making partial disclosures;
- Addressing the need for each agency to establish effective systems for improving transparency;
- Emphasizing that each agency must be fully accountable for its administration of the FOIA;
- Emphasizing that improving FOIA performance requires active participation by the Chief FOIA Officer; and
- Directing agency Chief FOIA Officers to review all aspects of their agencies' FOIA administration and report on the steps taken to improve FOIA operations and facilitate information disclosure.

FHFA is committed to providing access to agency records through a citizen-centered and results-oriented FOIA program. To facilitate this access, FHFA adopted the plain language question and answer format for its FOIA regulation which is typically preferred by the general public. The FOIA Office, which is comprised of the Chief FOIA Officer, FOIA Officer and FOIA

Liaison, continually reviews ways to improve the efficiency, effectiveness, and transparency of FHFA's FOIA program.

> *Name and Title of Agency Chief FOIA Officer:*
>
> > *David A. Lee*
> > *Managing Associate General Counsel*
> > *Chief Freedom of Information Act Officer*
> > *Chief Privacy Officer*
>
> *Reporting Period: March 2012 to March 2013*

Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe how your agency is working to apply the presumption of openness.

1.   Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period? Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

Answer: Yes. All new employees receive FOIA training. In addition, each office's designated FOIA point of contact received training on their duties and responsibilities. Further, the Chief FOIA Officer and FOIA Officer attended Department of Justice training as well as training sponsored by commercial vendors.

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information even when the information might be technically exempt from disclosure under the FOIA. OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

2.   Did your agency make any discretionary releases of otherwise exempt information?
Answer: No.

3.   What exemptions would have covered the information that was released as a matter of discretion?

Answer: Not applicable.

4.   Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

Answer: Not applicable.

5.   Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

Answer: FHFA has taken the following steps to ensure that the presumption of openness is being applied.

- *Reviewing requested records with the objective of identifying records that may be released in advance of determining applicable exemptions;*
- *Increasing the number of partial disclosures when full disclosure is not possible by segregating and releasing non-exempt information;*
- *Working with requesters to refine or narrow requests so as to better understand what the requester seeks and whether any responsive records can be located and released;*
- *Applying the foreseeable harm standard to information that could be properly withheld under Exemptions 2 and 5; and*
- *Proactively posting information on FHFA's website when multiple FOIA requests are made for the same information so that the information is readily available to the public.*

Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests."

This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

Describe here the steps your agency has taken to ensure that its system for responding to requests is effective and efficient. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

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1.   Do FOIA professionals within your agency have sufficient IT support?

Answer: Yes. FOIA professionals have laptops with the latest operating system and office suite software products. In addition, Information Technology HelpDesk staff is available to assist the FOIA office in conducting electronic searches for records. In 2012 a commercial-off-the-shelf (COTS) FOIA tracking software package was implemented which included a public facing module so that requesters can file their requests electronically. Further, FHFA continues to review automated tools to assist in performing electronic searches.

2.   Do your FOIA professionals work with your agency's Open Government Team?

Answer: Yes. FHFA's FOIA program personnel and the Open Government team collectively work to enhance the transparency of FHFA decisions and actions and to develop the agency's Open Government Plan. The Plan outlines FHFA's goals, timelines and objectives in support of the Open Government Directive.

3.   Has your agency assessed whether adequate staffing is being devoted to FOIA administration.

Answer: Yes. On an ongoing basis, the FOIA office assesses the number of requests received and the time needed to respond to these requests to ensure that adequate staff levels are maintained, and to determine whether additional resources are needed. As a result of that assessment in 2012, the FOIA office determined that temporary contractor assistance was necessary in order to assist in processing a number of highly complex requests with large volumes of responsive documents.

4.   Describe any other the steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancies, etc.

Answer: FHFA is taking or has taken the following steps to ensure that the system for responding to FOIA requests is effective and efficient while safeguarding sensitive and confidential records in accordance with Federal laws and regulations:

- *Providing requesters with a more detailed explanation of how each search was conducted, and if applicable, why the agency does not have responsive records, and why a particular exemption was cited when withholding documents;*
- *Maintaining more complete data on each request to facilitate easier reporting, analysis and monitoring of the number of denials, partial disclosures, and full disclosures and the types of information disclosed;*
- *Purchased and implemented a COTS FOIA tracking software in Fiscal Year 2012 to ensure better processing, tracking and reporting of FOIA requests;*

- *Developed correspondence templates to ensure that requesters receive confirmation of receipt of their request and responses to their requests in an expeditious manner;*
- *Assigning individual tracking numbers to each request to make it easier for requesters to inquire about their request;*
- *Using multi-track processing in order to respond more rapidly to simple requests on a separate track from complex requests;*
- *Updated the agency's public website to include updating : 1) the FOIA Reference Guide; 2) Frequently Asked Questions page; and 3) providing links to the Department of Justice's FOIA page;*
- *Providing IT support to the FOIA program to improve efficiency in searching for responsive electronic records;*
- *Maintaining dedicated FOIA telephone line and email account specifically to communicate with requesters;*
- *Continuing to developing standard internal protocols for searches, use of exemptions, and processing and authorizing responses, disclosures and denials;*
- *Developed training and educational materials for agency staff to understand roles and responsibilities under FOIA; and*
- *Assessing ways to improve the responsiveness and efficiency of its processes for responding to requests.*

Section III: Steps Taken to Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Describe here the steps your agency has taken both to increase the amount of material that is available on your agency website, and the usability of such information, including providing examples of proactive disclosures that have been made during this past reporting period (i.e., from March 2012 to March 2013). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1.   Provide examples of materials that your agency has posted this past year.

Answer: Some examples, while not all inclusive, include the following:

- *Press Releases*
- *Monthly interest rate survey data*
- *Regulations, notices, and public comments*
- *Capital disclosures*
- *Letters to Congress*

- *Federal Home Loan Bank Membership data*
- *Supervision handbooks and guidance*
- *Research papers*
- *Advisory Bulletins*
- *Final Opinions and Orders*
- *Policy and Administrative Staff Manuals*
- *Frequently Requested Records*
- *Agency reports*
- *Advisory Council Reports*
- *Resources for Consumers*
- *Regulatory Interpretations*
- *Collateral Securing Advances Reports*
- *Quarterly Conservator's Reports*
- *Federal Property Managers Reports*
- *Foreclosure Prevention Reports*
- *Enterprise Guarantee Fees Reports*
- *Annual Housing Reports*
- *Office of Minority and Women Inclusion Annual Report to Congress*
- *Federal Home Loan Bank Securitization Reports*
- *Refinance Reports*
- *Sustainability Plans*
- *Public Use Databases for Fannie Mae and Freddie Mac*
- *Public Use Databases for the Federal Home Loan Banks*
- *Staff Working Papers*
- *Mortgage Market Notes*
- *Housing Price Index data*
- *Executive Compensation Information*

2.   Beyond posting new material, is your agency taking steps to make the posted material more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory materials, etc.?

Answer: Yes.

3.   If so, provide examples of such improvements.

Answer: FHFA is in the process of completely redesigning and updating its external website. The primary goal of the FHFA.gov project is to present information in a customer-centric manner increasing usability and understanding of FHFA, its mission, work and results. This will be achieved by using the latest technologies and updating document metadata to

increase search capabilities, internal and external key stakeholder feedback research to understand content priorities, employing best website practices, adding analytics tools, and making the site viewable on a variety of browsers and devices. Furthermore, the site design and accompanying documents will be analyzed by a 508 compliance expert for accessibility.

4.   Describe any other steps taken to increase proactive disclosures at your agency.

Answer: FHFA's disclosures are primarily through the FOIA electronic reading room and other relevant locations on the public website – such as the Public Information link which has links to FOIA, News Center, Information Quality and other publicly available information.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. In 2010 and 2011, agencies reported widespread use of technology in handling FOIA requests. For 2013, as we did in 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

Electronic receipt of FOIA requests:

1.   Can FOIA requests be made electronically to your agency?

Answer: Yes.

2.   If your agency is decentralized, can FOIA requests be made electronically to all components of your agency?

Answer: No.

Online tracking of FOIA requests:

3.   Can a FOIA requester track the status of his/her request electronically?

Answer: Yes.

4.   If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

Answer: The information provided to the requester through the tracking system is as follows:

- *Received date*
- *Assigned*
- *Perfected*
- *On hold for information/clarification*
- *Request for documents sent*
- *Closed*
- *Fees due*

5.   In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

Answer: No.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability.

Answer: Not applicable.

Use of technology to facilitate processing of requests:

7.   Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

Answer: Yes.

8.   If so, describe the technological improvements being made.

Answer: The FOIA Office continues to work with the Offices of General Counsel and Technology and Information Management in acquiring an electronic search tool to search for electronic versions of agency records.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

The President and the Attorney General have emphasized the importance of improving timeliness in responding to requests. This section addresses both time limits and backlog

reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests and appeals. *For the figures required in this Section, please use those contained in the specified sections of your agency's 2012 Annual FOIA Report.*

1.   Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

a. Does your agency utilize a separate track for simple requests?

Answer: Yes.

b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

Answer: Yes.

c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

Answer: Not applicable.

2.   Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.

a.   If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

Answer: No.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

Answer: Not applicable.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

Answer: Yes.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

Answer: Not applicable.

3.   If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Answer: Yes. FHFA received 181 FOIA requests in fiscal year 2012. This is a 45% increase over fiscal year 2011 when 125 requests were received. While the total number of FOIA requests increased by 56, the backlog only increased by 2, from 4 to 6.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

Answer: No.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Answer: Yes. Not only did FHFA receive significantly more FOIA requests in fiscal year 2012, the complexity and volume of documents responsive to these requests was quite extensive. In a number of instances the volume of documents located in response to individual FOIA requests exceeded 5,000 pages with several over 10,000 pages.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

Answer: Not applicable.

Administrative Appeal Backlog:

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

Answer: Not applicable.

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

Answer: Not applicable.

c. Was the lack of a reduction in the appeal backlog caused by in increase in the complexity of the appeals received?

Answer: Not applicable.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

Answer: Not applicable.

4.   OIP has issued guidance encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

Answer: FHFA provided substantive interim responses for two of the backlogged cases. As of January 2013, both cases are closed.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1), (2), (3), please answer the following questions:

1.   Did your agency invoke a statutory exclusion during Fiscal Year 2012?

Answer: No.

2.   If so, what is the total number of times exclusions were invoked?

Answer: Not applicable.

Spotlight on Success

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts.

Success Story (Stories): A success story in 2012 continues the success story from 2011. In 2011 FHFA acquired a commercial off-the-shelf FOIA processing/tracking software system. In 2012, FHFA successfully implemented the tracking software. Not only did this include the processing and tracking aspects of the software but also included the public facing aspect whereby FOIA requesters can submit their requests online via the public facing portal. This has allowed FHFA to better track, monitor and process FOIA requests in a more efficient and effective manner. Further, by having the data in a central location/system, FHFA has been able to generate more effective and timely reports, both weekly, monthly and annually. This has allowed FHFA to better utilize existing resources, track trends in requests, be more efficient in processing requests (especially requests for the same or similar documents) and in the end be more proactive and responsive to FOIA requesters.